for answer to plaintiff's petition, denies all and singular the allegations thereof, except in so far as may be hereafter admitted.

Respondent admits that it received the cars of rice in ques-
6 tion, and conveyed the same in safety to Hamburg, S. C. where there was an extraordinary and unprecedented flood which could not have been anticipated and which sudden flood reached a car load of lime; properly placed, and, setting fire to the same, caused the destruction of twenty-five cars among which the two cars in question; and

Respondent avers that this happened without any contributory negligence on its part, and that the said sudden and unprecedented flood which could not have been anticipated, with the result and fire, was the approximate cause of the destruction of the Plaintiff's property.

Respondent avers that the said cars were not unreasonably delayed and that nothing could have been done by Respondent which was not done to save the said property;

Respondent avers, that under the limitations and exemptions in the bill of lading herein sued upon, it is not responsible.

Wherefore, Respondent prays that Plaintiff's demand be rejected, that he be condemned to pay the costs thereof and for all general relief.

New Orleans, June 7th, 1909.

(Signed) HALL & MONROE,
Attorneys.

7 Civil District Court, Division "E."

No. 89927.

NATIONAL RICE MILLING CO.
vs.
NEW ORLEANS & NORTHEASTERN R. R. Co. et al.

Testimony for Plaintiff, in the Above-numbered and Entitled Cause, Taken in Open Court on the 3rd Day of March, 1910, *Before the Honorable George H. Theard, Judge.*

Present:

W. Catesby Jones, Esq., for plaintiff.
Harry H. Hall, Esq., for defendant.

ASA S. KENNEDY, being duly sworn by the Minute clerk testified as follows:

By Mr. JONES:

Q. Mr. Kennedy, are you in the employ of the National Rice Milling Company?

A. Yes, sir.

Q. I hand you certain bills,—cars of rice shipped to Charleston,

South Carolina, about which this suit is brought, and ask you if that is the correct charge, $1,050.00?

A. Yes, sir; one of them is $1,050.00, less freight allowance, $69.00.

Q. Here is another bill, A. G. S. car: what does that show?

A. The amount is $1,437.50, less freight $92.00.

Q. In other words, I understand this freight was not prepaid?

A. No, sir; the freight was allowed.

By Mr. HALL:

Q. That is the correct value of the rice?

A. Yes, sir.

Q. The correct value?

A. Yes, sir.

Q. And the real market value of the rice?

A. Yes, sir.

By Mr. JONES: I offer in evidence the bills referred to by the witness,—"P-1" and "P-2."

8 (Endorsed:) No. 89,927—Civil District Court, Div. E.—National Rice Milling Co. vs. N. O. & N. E. R. R. Co. et als.—Evidence of plaintiff.—89927.—Filed Oct. 27, 1910.—(Signed) A. H. Fleming, D. C.

(Two Bills) Offered in Evidence by Counsel for Plaintiff.

Filed October 27th, 1910.

All reclamations must be made within five days after receipt of goods. Our responsibility ceases when we furnish clean bill-of-lading or receipt from the initial transportation line. No allowance will be made for short weights unless claim is accompanied by itemized weight certificates, and Railroad expense bills with proper exceptions, and positively no claim for shortage or damage will be allowed where consignees give transportation company clean receipt without exceptions.

Cable Address:
"Birleis," New Orleans.

Henry Kahn, President,
Albert Baldwin, Jr.,
Vice Prest.
P. P. Lynch, Sect. & Treas.

Gold Medal Awarded,
(Highest Award) Louisiana
Purchase Exposition,
St. Louis, Mo., 1904.

Gold Medal Awarded,
(Highest Award) Lewis &
Clark Centennial Exposition
Portland, Oregon, 1905.

NATIONAL RICE MILLING COMPANY.

General Offices, 542 Montegut St.

Sales Department, 235 North Peters St.

(Telephone Trunk Lines—Hemlock 722-723.)

Private Code:
A. B. C. 4th Edition
and Lieber's Code Used.

Mills:
Mill "A" New Orleans, La.
St. Louis Mill, New Orleans, La.

Pembroke Mill, Crowley, La.
Irrigation Plant No. 1,
Jennings, La.

Offices:
New Orleans, La., 235 North
Peters Street,
New Orleans, La., 542 Montegut St.
(P. O. Box 122, New Orleans).
Jennings, La., and Houston, Tex.

NATIONAL RICE MILLING COMPANY.

THIS PAGE BOUND VERTICAL IN BOOK

Address all communications to
SALES DEPARTMENT.

NEW ORLEANS, LA., 8/18, 1908.

Sold by A. Tobias Son Co.

No. 40. Sold to Carolina Rice Co.,

Charleston, S. C.

Terms: S. D./B. L.

All remittances and payments must be made direct to the Company at New Orleans, as no Agents or Brokers are authorized to make any allowance or collections for our account.

Pkts.			
300	Type No. 15	30000 3½¢	$1,050.00
		Less freight @ 23¢.....	69.00
			$981.00

Car C. N. O. & T. P. # 15545.

"Copy."

[Endorsed:] No. 89927. Civil District Court, Parish of Orleans. Filed October 27, 1910. (Sg.) A. H. Fleming, Dy. Clerk.

All reclamations must be made within five days after receipt of goods. Our responsibility ceases when we furnish clean bill-of-lading or receipt from the initial transportation line. No allowance will be made for short weights unless claim is accompanied by itemized weight certificates, and Railroad expense bills with proper exceptions, and positively no claim for shortage or damage will be allowed where consignees give transportation company clean receipt without exceptions.

THIS PAGE

BOUND IN BOOK

NATIONAL RICE MILLING COMPANY.

Cable Address:
"Birleis," New Orleans.

Private Code:
A. B. C. 4th Edition
and Lieber's Code Used.

Henry Kahn, President,
Albert Baldwin, Jr.,
Vice Prest.
P. P. Lynch, Sect. & Treas.

General Offices, 542 Montegut St.

Sales Department, 235 North Peters St.

(Telephone Trunk Lines—Hemlock 722-723.)

Mills:
Mill "A" New Orleans, La.
St. Louis Mill, New Orleans, La.

Gold Medal Awarded,
(Highest Award) Louisiana
Purchase Exposition,
St. Louis, Mo., 1904.

Pembroke Mill, Crowley, La.
Irrigation Plant No. 1,
Jennings, La.

Gold Medal Awarded,
(Highest Award) Lewis &
Clark Centennial Exposition
Portland, Oregon, 1905.

Offices:
New Orleans, La., 235 North
Peters Street,
New Orleans, La., 542 Montegut St.
(P. O. Box 122, New Orleans).
Jennings, La., and Houston, Tex.

Address all communications to
SALES DEPARTMENT.

NEW ORLEANS, LA., 8/19/1908.

Sold by A. Tobias Son Co.

No. 43. Sold to The Tiedeman Co.,
Charleston, S. C.

Terms: S. D. B. L.

All remittances and payments must be made direct to the Company at New Orleans, as no Agents or Brokers are authorized to make any allowance or collections for our account.

Pkts.			
300	Type No. 8	30000 3½	$1,050.00
100	Type No. 7	10000 3⅞	387.50
			$1,437.50
		Less Freight @ 23¢	92.00
			$1,345.50

Car A. G. S. # 12406.

"Copy."

[Endorsed:] No. 89927. Civil District Court, Parish of Orleans. Filed October 27, 1910. (Signed) A. H. Fleming, Dy. Clerk.

THIS PAGE BOUND VERTICAL IN BOOK

10 Civil District Court, Division "E."

No. 89927.

NATIONAL RICE MILLING CO.
vs.
NEW ORLEANS & NORTHEASTERN R. R. Co. et al.

Note of Evidence for Defendants, in the Above-numbered and Entitled Cause, Taken in Open Court on the 3rd Day of March, 1910, Before the Honorable George H. Theard, Judge.

Present:
W. Catesby Jones, Esq., for plaintiff.
Harry H. Hall, Esq., for defendants.

By Mr. HALL: Counsel for defendants offers in evidence the testimony taken under commission of T. J. Hayhoe, H. L. Thompson, H. W. Taylor, G. A. Benson, W. H. Dent, M. J. Marcus, H. L. Hungerford, D. W. Newell, J. R. Anderson, J. D. McElroy, L. E. Campbell, P. C. Martin, P. J. Pfeiffer, Grandville Beal, J. C. Parks, W. R. Parks, W. F. Taylor, J. R. Blackwell, C. W. Sykes, J. R. Southhall, C. J. Blount, together with the exhibits annexed to said testimony and the blue-print marked "Exhibit A" and identified by J. M. Hull, Jr., Commissioner.
Affidavits of S. N. Morris & Hugh O'Neal, "R. R. 2."

NOTE. Case continued for argument.

No. 89,927. Civil District Court. Parish of Orleans. Filed Oct. 27, 1910. (Sg.) A. H. Fleming, D'y Clerk.

11 *Deposition of T. J. Hayhoe, Taken Under Commission Issued November 30th, 1909; Offered in Evidence by Counsel for Defendants.*

Filed October 27th, 1910.

Civil District Court for the Parish of Orleans.

No. 89927.

The State of Louisiana. To any Notary Public in Memphis, Tennessee, Greeting:

Know Ye That we, reposing confidence in your prudence and fidelity, do, by these presents, give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in the Civil District Court for the Parish of Orleans, wherein The National Rice Milling Co. is plaintiff and The New Orleans & Northeastern Railroad Co. and the Southern Railway, are defendants.

Witness, T. J. Hayhoe, Memphis, Tennessee.

Therefore, We desire you, that at certain times and places, by you to be appointed, for that purpose, you cause the said witnesses to come before you, that you then and there examine them apart upon their respective corporeal oaths first taken before you upon the Holy Evangelists; that you reduce their examination to writing; and cause the witnesses to sign the same; and when you shall so have taken them, that you send the same, with this commission, closed up under your seal, to us in our Civil District Court in the City of New Orleans, without delay.

Witness the Honorable George H. Theard, Judge of said Court, this 30th day of November, in the year of our Lord one thousand nine hundred and nine, and in the 134th year of the Independence of the United States.

(Signed) J. P. DONAHUE, [SEAL.]
Deputy Clerk.

12 Civil District Court, Divison —.

No. 89927.

NATIONAL RICE MILLING COMPANY
vs.
NEW ORLEANS & NORTHEASTERN R. R. Co. et al.

Interrogatories to Be Propounded to T. J. Hayhoe, on Behalf of the Defendant, the Said Witness Residing at Memphis, Tenn., His Answers Thereto to Be Received by Any Notary Public in Memphis, Tenn., and to Be Read in Evidence on the Trial of This Cause:

Interrogatories.

Inty. No. 1. What is your name, age and occupation?

Inty. No. 2. Where were you and what was your occupation, August 25th, 26th, 27th, and 28th, 1908?

Inty. No. 3. If you say that at the time in question, you were yard master for the Railroad Company at Hamburg, S. C., state what was the condition of the yards at that time?

Inty. No. 4. What were your regular hours for being on duty as yardmaster in the Hamburg yards during August, 1908, and who had charge of the yards during the night?

Inty. No. 5. What engine, crew, if any, were on duty during the hours of the day and night in August 1908, at the Hamburg Yards of the Southern Railway Company?

Inty. No. 6. If you state in answer to the foregoing interrogatory or interrogatories that the Savannah River, at the time named, was above its normal height, state fully if you had ever on former occasions seen a material rise in the river and to what extent and state what was the greatest flood you have ever seen.

13 Inty. No. 7. How often before August 1908, if ever, you had ever seen the river rise in the Hamburg yards so as to flood the tracks?

Inty. No. 8. What was the condition of the river on the night of August 25th, when you went off duty, and what reason, if any, had you to anticipate the flood which took place on the ensuing day?

Inty. No. 9. State fully what knowledge or information you had on the subject and what you did?

Inty. No. 10. What time did you arrive on the morning of August 26th and how near the river did you reside?

Inty. No. 11. When you went on duty at seven o'clock of August 26th, what was the condition of the river?

Inty. No. 12. State fully and in detail what reason you had to apprehend during the preceding night or during the day of August 26th, a great rise or freshet in the river?

Inty. No. 13. What steps, if any, did you take to protect the property of the Southern Railway in the Hamburg yards and particularly its cars loaded with freight?

Inty. No. 14. Were any cars lost or destroyed in consequence, directly or indirectly of the flood in question?

Inty. No. 15. If any cars were lost and destroyed, how many and where were they, and if any of the cars were consumed by fire, state which cars and what was the cause of the fire?

Inty. No. 16. This suit is brought to recover the value of certain pockets of rice alleged to have been destroyed in the Ham-
14 burg yards on the 26th of August, the defense being that the cars containing the said rice being A. G. S. 12406 and C. N. O. 15545 were consumed by fire caused by the flood igniting lime in a car adjacent. State what you know of the location of the different cars which were destroyed or damaged and state fully how long the cars had been in the position indicated and whether or not they were ready to be moved on orders of the train dispatchers?

Inty. No. 17. State fully any facts within your knowledge which would assist the defendant in making out its said defense?

(Signed) HALL & MONROE,
Attorneys for the Defendant.

It is hereby agreed that a commission issue herein as above without motion, affidavit or fixing of return day and that the seal and signature of the Notary executing the said commission be considered full proof of his official capacity.

(Signed) W. C. JONES,
I. R. SAAL,
Attorneys for Plaintiff.

Civil District Court, Division —.

No. 89927.

NATIONAL RICE MILLING COMPANY
versus
NEW ORLEANS & NORTHEASTERN R. R. Co. et al.

Cross-Interrogatories to Be Propounded to T. J. Hayhoe, a Witness on Behalf of Defendant.

15 No. 1. State fully all of your occupations and employments prior to August 25, 1908, giving the name of your employer, the capacity in which you were employed, and the city or locality in which your duties were exercised.

No. 2. State by what railroad company, if any, you were employed at Hamburg, S. C., on August 25th, 26th, 27th and 28th, 1908.

No. 3. State fully the extent and dimensions of the railroad yards under your control or supervision as yardmaster, the location of the river relative thereto, the number of tracks contained in the said yard, the number of cars that the said tracks could accommodate, and the direction of the said tracks relative to the river attaching to your answers a sketch of the said yards and fully explain all the details thereof.

No. 4. State in detail the number of cars in the said yards on August 25th, 26th, 27th and 28th, 1908, giving the number and initial of each car, and state also the exact position in the yards of each particular car on the above mentioned four days, stating the hour and day on which each of the said cars arrived in the yards.

No. 5. If in answer to interrogatory No. 6, you state that you had, on former occasions, seen a material rise on previous floods in the Savannah River, give specific information as to these previous floods, stating the height at which the water reached, and stating particularly the amount of rain fall preceding these previous floods, and the amount of rain fall preceding the flood of August, 1908.

16 No. 6. If an answer to interrogatory No. 7, you state you have seen the river rise in the Hamburg yards so as to flood the tracks, state the rate at which the river rose on each occasion, giving the number of inches per hour.

No. 7. If you have made any statements as to the condition of the Savannah river on August 25th and August 26th, please state if your answers are from your personal observations and whether you took any actual measurements of the state of the water, or if your answers are merely based on your impressions.

No. 8. If you have stated in answer to any of the direct interrogatories that certain cars were lost by fire caused by water reaching a car of lime, state the exact time at which the car of lime took fire.

Answers of T. J. Hayhoe.

UNITED STATES OF AMERICA,
State of Tennessee, County of Shelby, ss:

Civil District Court, Parish of Orleans, State of Louisiana, Division, —.

No. 89927.

NATIONAL RICE MILLING COMPANY
vs.
NEW ORLEANS & NORTHEASTERN R. R. Co. et al.

Be it known, That, acting under and by virtue of the annexed commission issued in the above entitled and numbered suit by the Civil District Court, and authority in me vested, I, J. E. Dillard, a notary public, did cause to personally come and appear before me on this 10th day of December at the hour of 11 A. M., T. J.
17 Hayhoe, the witness named in the annexed commission, and, after having first duly sworn him according to law to tell the whole truth and to truthfully answer the annexed interrogatories and cross-interrogatories, I did then propound to him the said interrogatories and cross intys., to which he made answer as follows, to-wit:

To the first interrogatory he answers and says:

T. J. Hayhoe, age 46, Yardmaster for the Southern Railway Company, Memphis, Tennessee.

To the second interrogatory he answers and says:

Yardmaster at Hamburg, S. C., for the Southern Railway Company.

To the third interrogatory he answers and says:

The condition of the yards was normal.

To the fourth interrogatory he answers and says:

From 7 A. M. to 7 P. M. Switch engine foreman was in charge of the yards at night.

To the fifth interrogatory he answers and says:

One full crew day time and one full crew night and one engine from 12 noon to 12 midnight?

To the sixth interrogatory he answers and says:

I had seen several rises but none out of the banks into the yards. On the 26th of August, 1908 was the greatest flood I had ever seen, but previous to that time had never seen a flood in the river which came out of the banks into the yard, but had seen the river almost out of its banks prior to August 26th.

To the seventh interrogatory he answers and says:

I had never seen the river rise so as to flood the tracks.

To the eighth interrogatory he answers and says:

The river was high but not out of its banks and I had no reason

at that time to anticipate the rise, and to the best of my recollection it was not raining that night.

18 To the ninth interrogatory he answers and says:

I received a message from the Superintendent on the evening of August 25th that indications were there would be a rise in the Savannah River. I watch-- the river until 12 o'clock that night. Until 12 o'clock that night the river was not out of its banks and no indications of any serious rise more than there had been several rises previous to that date.

To the tenth interrogatory he answers and says:

I arrived at 7 o'clock and resided about two squares from the river.

To the eleventh interrogatory he answers and says:

The river was rising rapidly.

To the twelfth interrogatory he answers and says:

I had no reason during the night of August 25th, to anticipate the rise. On the morning of the 26th at 7 A. M., the river was rising rapidly and in thirty-five minutes it rose so rapidly it covered a switch stand.

To the thirteenth interrogatory he answers and says:

The cars that were loaded with freight were in what was known as old Hamburg yards and when I came on duty and saw that the river was rising rapidly, at once took an engine and tried to reach the cars. On the lead from the main track to old Hamburg there are three trestles. One of these was undermined by the rapid running water so that I could not get an engine over the trestle to reach the cars. I got a cut of cars and tried to reach the cars in Hamburg yard over the trestle but could not on account of the rapid rising water and the trestle unsafe. I moved all other cars that I could reach on to high ground and weighted down the main track trestles with cars and one trestle in the old Hamburg yard.

19 To the fourteenth interrogatory he answers and says:

Yes.

To the fifteenth interrogatory he answers and says:

I think there were thirty-seven cars in old Hamburg yards destroyed, to the best of my recollection, by fire caused by the water reaching a car of lime and slacking the lime and setting fire to the car. There were no cars destroyed by water.

To the sixteenth interrogatory he answers and says:

The cars that were in the old Hamburg yard were made up in a train ready to be moved at the order of the dispatcher but as to how long they had been in the position indicated, I cannot say without consulting records.

To the seventeenth interrogatory he answers and says:

I know of several instances of loss by the flood that looked as if people that had lived in Augusta for years did not anticipate for the reason that the Riverside Mills were almost ruined, the C. & W. C. Riverside yard was almost completely wiped out and several cars washed down the river. Several wholesale houses located in the heart of the city, for instance, Dicks was badly damaged by the flood; Nixon's wholesale house was set on fire by lime, although when the

water rose so rapidly they endeavored to move their goods to higher ground, but on account of the rapid rise of the water they were unable to do so. The water reached their lime, slacked it and set fire to the building and several men drowned trying to escape from the building. I know this because I was there and saw it.

20 To the first cross-interrogatory he answers and says:

I started as a call boy for the C. & N. W. at Chicago when I was thirteen years old, in 1876. Later, I was a switch engine fireman and switch engineer for the same road, then I went in the employ of the F. & P. M., it was at that time, at Saginaw, Mich., as brakeman, later a freight conductor, then passenger conductor for the same road, then I went with the Northern Pacific at Brainerd, Minn. as engineer and was there a little over two years. Then I went in the employ of a contractor building the Pacific Division of the Northern Pacific from Columbia River to Seattle. Then I went to Broadview, Northwestern Territory, Canada, as work train conductor building the Canadian Pacific Railway. I left there and went to Bay City, Mich. as night Yardmaster for the Michigan Central Railroad. From there to Detroit as Night General Passenger Yardmaster, transferred from there to St. Thomas, Canada as General Yardmaster. Then was made Traveling General Yardmaster for the whole Michigan Central System. Then was reduced on account of dull times to General Yardmaster, then took service with the C. H. & D. at Cincinnati as Terminal Trainmaster and remained there twelve years. Then I took service with the Chicago, Cincinnati & Louisville as Assistant Superintendent of Construction. Then I took service with the Missouri Pacific as Superintendent of Terminals at Little Rock, Arkansas. Then I was Yardmaster at Hamburg.

To the second cross interrogatory he answers and says:

I was employed by the Southern Railway Company as Yardmaster at Hamburg.

To the third cross interrogatory he answers and says:

21 I answer this by attaching blue print as Exhibit No. 1 to my deposition and which is a correct blue print giving answers to this question, with the exception of one track, which I cross-mark, which track was not there at the time I was Yardmaster, and which runs from the coal chute to the main track at the yard office. I cannot state definitely the number of cars the track would hold.

To the fourth cross-interrogatory he answers and says:

I cannot answer without consulting records.

To the fifth cross-interrogatory he answers and says:

I have seen the river rise several times previous to August 26, 1908, and had heavier rains than we had then in and around Augusta and Hamburg and the river never left its banks. I do not know the exact height to which the water rose on those previous occasions prior to August 26th.

To the sixth cross-interrogatory he answers and says:

I never saw the river rise into the yard previous to August 26th, 1908.

To the seventh cross-interrogatory he answers and says:

My answers are based on my personal observations but I took no measurements.

To the eighth cross-interrogatory he answers and says:

About 5 P. M. of August 26th, 1908. The water had reached that car before that time, but you see it was slacking away and hadn't got to going.

And further Respondent saith not.

22 (Signed) T. J. MAYHOE.

All of which above answers were reduced to writing at my instance and request in his presence, and were then read over to said witness, who persisted therein, and were then signed by said witness in my presence.

In faith whereof, I have hereunto set my hand and seal of office. this 14th day of December, 1909.

(Signed) J. E. DILLARD,
[SEAL.] *Notary Public.*

23 EXHIBIT No. 1 (Blue Print, Attached to Foregoing Answers of T. J. Mayhoe).

Filed October 27th, 1910.

(Here follows map marked p. 23.)

24 *Depositions of Harry L. Thompson and Others, Taken under Commission Issue- November 30th, 1909, Offered in Evidence by Counsel for Defendants.*

Filed June 9th, 1910.

Commission.

Civil District Court for the Parish of Orleans.

No. 89927.

The State of Louisiana to J. M. Hull or any other Notary Public in Augusta, Ga., Greeting:

Know Ye That We, reposing confidence in your prudence and fidelity, do by these presents, give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendants, in a certain suit now pending in the Civil District Court for the Parish of Orleans, wherein The National Rice Milling Co. is plaintiff, and The New Orleans & Northeastern Railroad Co. and The Southern Railway, are defendants.

Witnesses: Harry L. Thompson, Henry W. Tyler, G. A. Benson, W. H. Dent, M. J. Marcus, H. L. Hungerford, D. W. Newell, J. R. Anderson, J. D. McElroy, L. E. Campbell, E. K. Chapman,